

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

AMENDED ORDER

IN THE MATTER OF

AP LHI, INC.,

FOR VIOLATING WASTE DISCHARGE

REQUIREMENTS AND DISCHARGE OF

SEDIMENT FROM THE SKYRIDGE PROJECT (

TO MILAGRA VALLEY CREEK (

CITY OF PACIFICA (

SAN MATEO COUNTY (

(COMPLAINT NO. 98-061

(FOR

(ADMINISTRATIVE

(CIVIL LIABILITY

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the Regional Water Quality Control Board, San Francisco Bay Region (the Regional Board) may impose civil liability under Section 13385 of the California Water Code.
2. Unless waived, a hearing on this matter will be held before the Regional Board on

7. Surface water drainage from the site is tributary to Milagra Valley Creek and subsequently to the Pacific Ocean. The existing beneficial uses of the water downstream of the site include cold freshwater habitat, warm freshwater habitat, fish migration, freshwater spawning, wildlife habitat, water contact recreational and non-contact recreational.
8. Provisions of the General Permit state, in part, the following:
 - [I] A.1 Discharges of material other than storm water, which are not otherwise regulated by a NPDES permit, to a separate storm sewer system or waters of the nation are prohibited, ...
 - [II] A.2 Storm water discharge shall not cause or threaten to cause pollution, contamination, or nuisance.
 - [III] C.2 All Dischargers must develop and implement a Storm Water Pollution Prevention Plan in accordance with Section A: Storm Water Pollution Prevention Plan (SWPPP).
9. Section A of the General Permit defines the contents of a SWPPP to be a document which identifies methods to construct and implement storm water pollution prevention measures (control practices) to reduce pollutants in storm water discharges from the construction site. Item No. 6 of Section A - Erosion and Sediment Control, prescribes practices to revegetate disturbed areas as soon as feasible after grading and requires consideration of seeding, mulching, and stabilization. At a minimum, the discharger must implement these practices on all areas during the rainy season.
10. The San Francisco Bay Basin Water Quality Control Plan (the Basin Plan), prohibits the discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses (Table 4-1, Item No. 9).

ALLEGATIONS

11. The Discharger did not adequately protect the site from erosion during the rainy season as required by the General Permit. Although some areas were treated with erosion control measures, much of the site remained prone to erosion throughout the 1997/1998 rainy season. In addition to the lack of erosion protection, the site's sediment basin failed to adequately remove sediment from storm water due to non-implementation and/or inadequate design and construction, resulting in the discharges of sediment to Milagra Valley Creek.
12. On January 22, 1998, staff issued a Notice To Comply (NTC) to the Discharger identifying conditions which were in violation of the site's Waste Discharge Requirements, and the site's SWPPP. The NTC included recommendations to resolve the violations but the Discharger chose to continue without properly implementing the SWPPP, nor correcting the deficiencies identified in the NTC.
13. On March 24, 1998, the Executive Officer issued a Notice of Violation (NOV) to the Discharger informing it of continued violations of the General Permit.

14. The Discharger's failure to comply with the General Permit issued pursuant to CWC Section 13377 constitutes a violation of Water Code Section 13385 for which this Board may pursue civil liability against the discharger.
15. The Discharger violated Waste Discharge Requirements by failing to comply with the provisions and discharge prohibitions of the General Permit regulating discharges of storm water runoff associated with construction activity and violated a prohibition in the Basin Plan by discharging sediment in prohibited quantities.
16. During the entire rainy season, the Discharger failed to adequately protect the site from erosion and failed to protect Waters of the State from discharges of sediment via poorly instituted sediment control measures. Had appropriate measures been implemented, as requested, significant reductions of pollutants could have been achieved.
17. The extent of damage due to sediment discharged from the site to Milagra Valley Creek is difficult to assess; however, silt deposition in waterbodies can cause significant environmental damage.
18. It is clear that discharges from this site have contributed to the degradation of Waters of the State. This Complaint for Administrative Civil Liability considers those discharges and the Discharger's non-compliance with the General Permit.

PROPOSED CIVIL LIABILITY

19. The maximum civil liability which could be imposed by the Regional Board in this matter is as follows:
 - a. Pursuant to Section 13385(c.1), \$10,000 per day of violation;
 - b. Pursuant to Section 13385(c.2), up to \$10 per gallon for the volume discharged greater than 1,000 gallons.
20. Based on days of violation the maximum administrative civil liability which could be imposed by the Regional Board in this matter, under Section 13385 of the Water Code, exceeds \$1,660,000. That amount is based on 166 days while the site was out of compliance with the General Permit.
21. In determining the amount of administrative civil liability, the Regional Board considered the following factors described in the attached staff report:
"the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require." [Water Code Section 13385(e)].
22. The Executive Officer of the Regional Board proposes that the administrative civil liability imposed by this Board be in the amount of \$68,000, which includes \$8,000 in staff costs.
23. The Discharger has requested that \$60,000 of the amount be suspended pending accomplishment of a supplemental environmental project acceptable to the Executive Officer. The Discharger must submit to this Board a proposal for such a project by October 19, 1998. If the proposed project is not acceptable, the

Discharger has 30 days from receipt of notice of rejection of that submittal, to either submit a new or revised proposal or submit payment for the full amount suspended. The accepted project(s) must be completed by September 19, 1999. Any money not used by that date must be submitted to this Board and made payable to the State Cleanup and Abatement Fund or directed toward an alternative project acceptable to the Executive Officer.

24. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.

Date

Loretta K. Barsamian
Executive Officer

WAIVER OF HEARING

You may waive the right to a hearing. If you wish to waive the hearing, an authorized person must check and sign the waiver below and return it to the Regional Water Quality Control Board, San Francisco Bay Region, at 2101 Webster Street, Suite 500, Oakland, CA 94612. Payment of the civil liability would be due within 60 days from the date of this Complaint. Any waiver will not be effective until 30 days from the date of this Complaint to allow other interested persons to comment on this action.

If you should have any questions, please contact Bruce H. Wolfe at (510) 622-2443 or the Regional Board Counsel at (916) 657-2086.

WAIVER

☐ By checking this box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. 98-061, and to remit payment for the civil liability imposed to include a proposal for supplemental environmental projects as mitigation for the amount of liability suspended. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, civil liability proposed. I agree to remit payment for the civil liability imposed within 60 days from the date this Complaint was issued.

Date

Discharger